IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.318 OF 2003

1. Yeshwant P. Shirodkar,

2. Laximan P. Shirodkar,
both major, residents of
Portaes, Panaji, Goa. ..... Petitioners.

Vs.

1. Umakant B. Kenkre, major,

2. Smt. Durga Umakant Kenkre,
wife of defendant No.1,
Umakant B. Kenkre,

3. Smt. Vanashri Fatu Kenkre,
widow of late Fatu Balchandra
Kenkre,

4. Shri Nitin Fatu Kenkre,
All four residents of Cabeca,
Santa Cruz, Ilhas, Goa. .... Respondents.

Mr. J.E. Coelho Pereira, Sr. Advocate with Mr. V. Korgaonkar, Advocate for the petitioners.

Mr. A.R. Kantak, Advocate for respondents No.1 and 2.

Mr. Sudin M.S. Usgaonkar, Advocate for respondents No.3 and 4.

CORAM : F.I. REBELLO, J.

DATE : JULY 31, 2003.

ORAL JUDGMENT :

Rule. Respondents waive service. Heard forthwith.

2. The petitioners herein are the plaintiffs before the trial Court. By Civil Misc. Appln.

No.169/200 had sought an amendment of the pleadings and had also moved an application dated 7.10.2002 for seeking to rely upon and produce evidence of a sanad. There is also another application whereby the petitioners sought to produce three power of attorneys as set out in paragraph 6 of the application.

3. The learned trial Court by impugned order dated 15.04/2003 dismissed the application for amendment and therein also dealt with the application for production of documents which was not numbered separately and also rejected the same.

4. On behalf of the petitioners, it is contended that the amendments sought were necessitated so as to bring the real controversy in issue, considering the pleadings and that it neither displaces the cause of action nor alters it or are barred by limitation or are useless. In so far as the documents are concerned, it is contended that one is a sanad which the respondents had obtained and, therefore, the same would be in their possession. The power of attorneys are the documents executed, which enabled the respondents to enter into transactions. At the hearing of the petition, the documents are now restricted, (1) the power of attorney executed by defendant No.2 in favour of defendant No.1 and the other executed by

defendant No.3 in favour of late F.B. Kenkre. The petition was opposed by on behalf of the respondents to contend that there is no error on the face of the record, committed by the learned trial Court and consequently, this Court should not interfere with the impugned order.

5. Having heard the learned Counsel for the parties, in my opinion, as the amendments sought for being clarificatory of what has already been pleaded and to bring out the real controversy in issue, have to be allowed as they would neither displace the cause of action or alter the nature of the suit or are barred by limitation or are useless. The trial Court clearly committed an error apparent on the face of the record and consequently, the impugned order will have to be set aside.

In so far as the documents are concerned, the original sanad is bound to be with the respondents as it is they who had obtained the conversion of the land from the Revenue Authorities. The Power of Attorneys are the documents executed between the parties and considering the amendments now sought to be brought on record, will be relevant for the purpose of proving the issues in issue. Rejecting the production of document would also amount to an error apparent on the face of

the record, committed by the learned trial Court.

5. In the light of that, the following Order :

The impugned order is set aside. Rule is made absolute in asmuch as Civil Misc Appln. No.169/2002 is allowed. The applications for production of documents dated 16.4.2002 and 7.10.2002 are allowed to the extent of the sanad and the two power of attorneys earlier referred to.

On behalf of the petitioners, learned Counsel makes a statement that they will now proceed with the suit without seeking any further amendments of the pleadings. Statement accepted.

Considering the various applications for amendment, the trial Court to proceed with the trial of the suit after the issues are framed. Considering that one of the defendants is aged over 75 years, the trial Court to expedite the suit.

Rule accordingly. In the circumstances of the case, there shall be no order as to costs.

F.I. REBELLO, J.

ssm.